

**SCIENCE & TECHNOLOGY ORGANIZATION  
CENTRE FOR MARITIME RESEARCH & EXPERIMENTATION  
PROCUREMENT CONTRACTS  
STANDARD TERMS & CONDITIONS**

**(Edition July 2016)**

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## **1. Definitions**

As used throughout this contract, the following terms shall have meanings as set forth below:

- a. The North Atlantic Treaty Organisation is hereafter referred to as "NATO".
- b. "Centre" means NATO Science & Technology Organization's (STO) Center for Maritime Research and Experimentation (CMRE), located in La Spezia, Italy.
- c. "Centre", "CMRE", "STO" and "NATO" may be used interchangeably throughout this set of clauses and provisions as well as resulting contracts.
- d. Contracting Officer means the staff member appointed in writing by the CMRE Director, with the exclusive authority to legally bind the Centre by signing contracts for the procurement of goods and services. The Contracting Officer has the authority to enter into, administer and/or terminate contracts, as well as make related determinations & findings.
- e. Inspector – or Contracting Officer Representative (COR) means a staff member designated by the Contracting Officer for the purpose of determining compliance with the technical requirements of the contract.
- f. The term "days" shall be interpreted as meaning calendar days.
- g. Purchase Order means the contractual document used by the Centre to order supplies and services.
- h. Open-end contract means a contract for the provision, up to a maximum total value, of indefinite quantities of supplies or services for which the unit value is established in the contract.

## **2. Applicability**

These standard terms & conditions, apply to all CMRE procurement contracts, agreements (i.e. BOAs) and/or purchase orders, unless otherwise agreed in writing by the parties.

## **3. Juridical personality**

The Centre is an executive body of the Science and Technology Organization (STO) which constitutes an integral part of the North Atlantic Treaty Organisation (NATO).

The STO shares in the international and juridical personality of NATO, by virtue of Article IV of the Ottawa Agreement. The juridical personality of the STO is an intrinsic part of that of NATO and cannot be distinguished from it.

All assets acquired by the CMRE/STO shall be acquired in the name and as the property of NATO.

Responsibility for the activities of the CMRE/STO, including agreements and contracts, shall be borne by NATO.

## **4. Applicable Law**

Except as otherwise provided in the Contract, the Contract shall be governed, interpreted and construed in accordance with the Law of *the Republic of Italy*.

Nothing in this Contract is to be construed as subjecting the government of one country to the jurisdiction of the courts of another country, or as relinquishing any privilege, immunity, or other protection possessed by the North Atlantic Treaty Organization or its components.

The Contractor shall advise the Centre of any national laws or regulations, or any circumstance known to him which might prevent him from fulfilling his contractual obligations.

Both parties are under duty of good faith. The contract includes not only the specific terms, but also law and customary practice applicable in the place where the contract is to be carried out and to the Type of Trade to which the contract relates.

## **5. Authority**

Any contract modifications, including but not limited to changes, additions or deletions and instructions under this contract shall not be binding for the Centre unless issued or confirmed in writing by the Contracting Officer.

The Contractor may not accept any other directions in the performance of this contract other than from the Contracting Officer, or the duly appointed COR.

## **6. Responsibility**

The Contractor shall be responsible for the execution of all terms of this contract. He may not delegate his rights or transfer his obligations without the prior permission of the Contracting Officer.

## **7. Sub-Contracts**

The Centre will consider the Contractor to be the sole point of contact with regard to sub contractual stipulations, to include payments, guarantees, etc. The Contractor may subcontract such portions of the work as is customary in the carrying out of similar contracts. The designation of a Sub-Contractor must be approved by the Contracting Officer, who may, for reasons of his own, refuse such designation. No assignment or subcontracting shall relieve the Contractor from any of its obligations under the contract or impose any liability upon the Centre to an assignee or subcontractor.

Unless otherwise agreed to by the Centre, in any assignment or subcontracting, the Contractor agrees to bind each assignee or subcontractor by the terms of the Contract General Provisions as far as applicable to the work.

The Sub-Contractor's contract must contain a clause whereby the Contractor is entitled to cancel the contract at any time and without notice, if so required by the Centre.

Sub-contractors shall be limited to citizens or legal entities of member nations of NATO, unless specifically authorised by the Contracting Officer. The Contractor shall determine that any sub-contractor proposed by him for the furnishing of supplies or services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance by the sub-contractor's national authorities, which is still in effect, prior to being given access to such classified information.

The Sub-Contractor, if any, shall procure all permits and licenses necessary for the execution of the contract, at no cost to the Centre.

## **8. Security**

The Contractor shall comply with all security requirements prescribed by the Centre and the National Security Authority or designated security agency of each NATO country in which the contract is performed.

The Contractor shall be responsible for the safeguarding of NATO classified information, material and equipment entrusted to him or generated by him in connection with the performance of the contract.

Any known or suspected breaches of security or other matters of security significance shall be reported by the Contractor to the Contracting Officer and to the National Security Authority or designated security agency.

The Contractor shall apply to the Contracting Officer for approval before sub-contracting any part of the work, if the sub-contract would involve the sub-contractor in access to classified information. The Contractor shall place the sub-contractor under security obligations no less stringent than those applied to his own contract.

## **9. On-Site Security**

Only persons that are citizens of a NATO member nation shall be employed by the Contractor to work at the Centre and/or on board of the two vessels CRV Leonardo and NRV Alliance.

Contractor's personnel visiting installations and/or working at the Centre shall require an individual security clearance at the level established by the Contracting officer and confirmed to the Centre by the relevant National Security Authority. This requirement shall also apply to all sub contractor's personnel.

The contractor shall provide the Contracting Officer with a list of personnel and vehicles for which a requirement to enter the Centre and/or work on board of the vessels exists. This list shall be updated continuously until completion of final acceptance, and monthly until the end of the warranty period.

The Contractor accepts to terminate immediately the duties at the Centre of any employee whose presence is deemed undesirable by the Centre on the same day that such notification is given by the Contracting Officer, without the Centre being required to state the reasons; in no case may the Centre be held responsible for the consequences of such a decision.

#### **10. Authorisation to Perform**

The Contractor warrants that he and his subcontractors have been duly authorized to operate and do business in the country or countries in which this Contract is to be performed; that he and his subcontractors have obtained all necessary licenses and permits required in connection with the Contract; that he and his subcontractors will fully comply with all the laws, decrees, labor and safety standards and regulations of such country or countries during the performance of this Contract; and that no claim for additional monies with respect to any authorizations to perform will be made upon the Centre.

#### **11. Assignment of Claim**

The Contractor without prior written authorisation from the Contracting Officer will make no assignment of claim.

#### **12. Material and workmanship**

Unless otherwise specifically provided for in the specifications, all equipment, materials and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purposes intended. All workmanship shall be first class.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the Contracting officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection. The Contracting Officer may, in writing, require the Contractor to remove from the work such employees as the Contracting Officer deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the interest of the Centre.

All software implemented on or delivered with the supplies shall be at the start of acceptance, the most recent versions or releases as available. The Contractor shall for a duration of minimum five (5) years after acceptance, and upon their availability, offer to the Centre all software changes, fixes and new releases. These shall be offered at no cost when they are offered free of charge on the commercial market.

### **13. Working Hours (applicable to on-site service contracts)**

The work shall be performed on weekdays in accordance with the official working hours of the Centre: 08:00H till 18:00H. The Contractor shall obtain from the contracting officer the list of the Centre holidays during the period of performance for the contract. Special requests shall be made to the contracting officer for permission to work outside normal Centre's working hours or on Centre's holidays. Start times and planning of various stages of the work shall be coordinated with the contracting officer and these times shall be adhered to.

Exceptionally, the Contractor accepts that the Centre may have a requirement that work be performed outside the normal working hours. The financial compensation shall be mutually agreed between the Contractor and the Contracting Officer.

### **14. Implementation Schedule**

For all works or projects which are to be broken in phases, or as stipulated in the Contract, the Contractor shall submit prior to commencing any works and for approval by the contracting officer, a practicable planning and implementation schedule. The schedule shall show as a minimum the supply phase, the construction phase, and the test and acceptance phase. The construction phase shall show the major construction activities. The date to begin and end the phases and activities must be clearly indicated. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the progress of work at any given time. The contractor shall enter on the chart the actual progress at such intervals as directed by the contracting officer, and shall immediately deliver to the contracting officer three copies thereof.

If the contractor falls behind a previously agreed progress schedule, the contractor shall take such steps as are necessary to improve his progress. Also, the contracting officer may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained; all at no additional cost to the Centre.

Failure of the contractor to comply with the above may result in the termination for default of the relevant works or project by the Contracting Officer on the grounds that the contractor is not executing the work with such diligence as will ensure completion within the time specified in the contract or the Call Order. The Contracting Officer may then exercise his right to have the project completed by a third party and the additional cost and damages thereof charged to the Contractor.

### **15. Inspections & Tests**

All works shall be subject to inspection and test by the Centre, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

In case works are not in conformity with the requirements of this contract, the Centre shall have the right either to reject them or to require their correction or to accept them against reduction in price which is equitable under the circumstances.

If any inspection or test is made by the Centre on the premises of the Contractor or sub-contractor, the Contractor without additional charge shall provide all reasonable facilities and assistance to the Centre inspectors in the performance of their duties. If inspection or test is made at a point other than the premises of the Contractor or a sub-contractor, it shall be at the expense of the Centre except as otherwise provided in this contract.

The Centre reserves the right to charge to the Contractor any additional cost of inspection and test when works are not completed at the time of such inspection, when test is requested by Contractor or when re-inspection or re-test is necessitated by prior rejection.

Failure to inspect works shall neither relieve the Contractor from responsibility for such works as are not in accordance with the contract requirements nor impose liability on the Centre therefore.

The inspection and test by the Centre of any works does not relieve the Contractor from any responsibility regarding other failures to meet the contract requirements which may be discovered prior to acceptance.

## **16. Acceptance**

The acceptance is the action by which the Centre acknowledges that the Contractor has fully demonstrated that the works or deliveries are complete and operational and meet the Centre's requirement.

Except as otherwise provided in this contract, the acceptance of the work is made after completion of all works and successful completion of inspections and tests.

Except as otherwise provided in the contract, acceptance shall be conclusive except as regards latent defects, hidden deficiencies, fraud, or such gross mistakes amounting to fraud, or otherwise stated in the contract.

## **17. Title to Property**

Unless this contract specifically provides for earlier passage of title, title to property of the supplies or works covered by this contract shall pass to -NATO upon formal acceptance, regardless of when or where the Centre takes physical possession.

## **18. Risk of Loss or of damage**

Unless this contract specifically provides otherwise, risk of loss or of damage to supplies covered by this contract shall remain with the Contractor until, and shall pass to the Centre upon acceptance of the work by the CMRE.

## **19. Notice and Assistance regarding Patent and Copyright Infringement**

The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

In the event of any claim or suit against the Centre on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Centre, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim.

This clause shall be included in all sub-contracts.

## **20. Patent Indemnity**

The Contractor shall indemnify the Centre from and against any patent liability or claim for infringement of any patent or commercial or intellectual property right of any kind or nature (including costs and expenses) made or used in the performance of this Contract and also including costs and expenses of litigation if any.

The Centre shall indemnify the Contractor from and against all claims of Third Parties arising by reason of the use by the Contractor of the plans and of any documents or information supplied to the Contractor or its Sub-contractors by the Centre or on the Centre's behalf in connection with the performance of this contract and from all costs and expense (including costs and expenses of litigation) incurred by the Contractor by reason of any such claim.

## **21. Rights in Technical Data and Computer Software**

The Centre shall have unlimited rights in:

- (a) all technical data and computer software, to include source code, resulting from performance of experimental, developmental, integration, testing, or research work which was specified as an element of performance in this contract.
- (b) plans, drawings, manuals or instructional materials prepared or required to be delivered under this contract for implementation management, installation, operation, maintenance and training purposes.

Technical data and software delivered under this contract shall be marked with the number of this contract, name of Contractor and the rights transferred to the Centre.

## **22. Warranty**

Notwithstanding inspection and acceptance by the Centre of supplies furnished or work performed under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that for a period of twelve (12) months following the date of acceptance all supplies furnished and work performed under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.

The Contracting Officer shall give written notice to the Contractor of any breach of the warranties within thirty (30) days after discovery of any defect.

Within a reasonable time after such notice, the Contracting Officer may either:

- a) by written notice require from the contractor correction to be made within a specified time or replacement of any supplies or works that do not conform with requirements of this contract; or

b) retain such supplies or works, whereupon the contract price thereof shall be reduced by an amount agreed upon by the Contractor and Contracting Officer.

When return, correction or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant and return.

If the Contractor does not agree as to his responsibility to replace or correct the supplies delivered or the work, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph c. to correct or replace the defective or non-conforming supplies or works. In the event it is later determined that such supplies or work were not defective or non-conforming within the provisions of this clause, the contract price will be equitably adjusted.

Any supplies or works thereof furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies or work initially delivered. Corrected parts will be warranted for a period not less than six (6) months starting at the time the part is received back at the user's location.

Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

The rights and remedies of the Centre provided in this clause are in addition to and do not limit any rights afforded to the Centre by any other clause of the contract.

### **23. Indemnification of the Centre**

The Contractor shall indemnify and hold the Centre harmless against claims for injury to persons or damages to property of the Contractor or others arising from the Contractor's possession or use of the Centre furnished property, including facilities and utilities.

The contractor shall at all times hold the Centre, its agents, representatives and employees harmless from any and all suits, claims, charges and expenses which arise out of acts or omissions of the contractor, his agents, representatives or employees.

The contractor shall repair at his expense any damage resulting from his work and inflicted to the Centre buildings, equipment, services, utilities, roads and grassed areas, where such work is not included in the scope of work. In the case of buried utilities, this will apply to any utility which was previously notified to the contractor by the issue of a digging permit. The repair work shall be done according to the Contracting Officer's specifications. All excavations and damages to grassed areas that were not a part of the contract work shall be repaired at the contractor's expense.

### **24. Health, Safety and Accident Prevention**

The Contractor shall comply with the Italian National and Regional Laws and Regulations on safety at work, and with the Regulations in force at the Centre with regard to health protection, safety and hygiene.

If the Contracting Officer notifies the Contractor in writing of any non-compliance in the performance of this contract, with regard to safety, hygiene and health requirements, and the contractor fails to take immediate corrective action, the Contracting Officer may order the contractor to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle the Contractor to an adjustment of the contract price or other reimbursement for resulting increased costs or losses, or to an adjustment of the delivery or performance schedule.

## **25. Safety Tests and Inspections**

It is the Contractor's responsibility to obtain, at no additional cost to the Centre, the suitable official certificates for all parts, equipment and installations (such as tanks, generators, transformers, gas lines, etc.) that before putting into use and because of Italian safety regulations require tests or inspections by formally recognized agencies or firms. The certificates, together with the validated test reports, shall be available and submitted to the Contracting officer prior to the start of the acceptance testing by the Centre. In case of a disagreement between the contracting officer and the contractor concerning the conformity of materials and equipment, tests may be called for by the Centre, whereby in the event of failure of the item under test, all costs associated with the tests shall be at the contractor's expense. All new electrical and mechanical installations or modifications must be inspected and accepted by a certified inspection agency when required by Italian or EU regulations.

## **26. On-Site Utilities (applicable to on-site construction and service contracts)**

When applicable and possible, electricity shall be supplied by the Centre for the duration of the work. The electricity must not be wasted. The Contractor shall supply electric power cables and temporary distribution boards to the work areas at its own expense. All connections to electrical distribution boards shall be made under the supervision of the Centre. If the distribution board has insufficient capacity (physical size or current), the Contractor shall propose a temporary board, to be supplied, fitted and removed upon completion of the work by the Contractor.

Water for project execution shall be supplied by the Centre for the duration of the works. The water must not be wasted. The contractor shall supply the necessary pipes, hoses, and connections to fit the nearest available existing take out point to the Centre's supply.

## **27. Interruption of Utilities (applicable to on-site construction and service contracts)**

If an interruption of utilities is necessary in the performance of specific on-site work by the Contractor, he shall request from the Contracting officer written approval at least ten (10) working days prior to the desired interruption. The time and duration of an interruption shall be coordinated with the Contracting officer.

## **28. Storage (applicable to on-site construction and service contracts)**

If needed, the storage of the Contractor's tools, equipment and material shall be the Contractor's responsibility and shall be confined to an area designated by the contracting officer. Access to this area is possible only during working days and normal working hours.

The contractor may, at his own expense and with the Contracting officer's agreement, install a storage facility on the site and dismantle it after completion of the work.

The Contractor remains the sole responsible for the security of his stored equipment and supplies.

### **29. Contractor Personnel**

The contractor shall provide and pay, as required, qualified personnel as needed for the proper performance of the services required under this contract; he shall strictly comply with all applicable labour Laws, tariffs and social security and other regulations applicable to the employment of his personnel.

### **30. Insurance**

The contractor agrees to procure and maintain, without any cost to the Centre, any workmen's compensation, employer's liability or other type of insurance required by law.

The Contractor shall, at his own expense, procure and maintain during the entire performance period of this contract a suitable Civil Liability insurance to cover on the one hand damage which could be caused to the Centre premises, e.g. by fire, and on the other, injury to persons. This insurance will be submitted to the Contracting Officer for verification of adequacy.

The Contractor shall maintain with the Contracting Officer, at all times during performance, a current Certificate of Insurance showing at least the insurance required by the Contract and providing for thirty (30) days written notice to the Contracting Officer by the insurance company prior to cancellation or material change in policy coverage.

### **31. Contractor Equipment**

The contractor shall furnish, install and maintain his own furniture and equipment without any cost or expense to the Centre. Approval from Contracting officer is required prior to the installation of any major item of contractor equipment. The equipment, furniture and fixtures provided by the contractor shall not be removed without prior written approval of the Contracting officer and, in the event of removal, all costs and expenses thereof shall be borne by the contractor.

### **32. Centre Furnished Property**

The Centre may deliver to the Contractor, for use only in connection with this contract, the property described in the contract (hereinafter referred to as "Centre furnished property"), at the times and locations stated therein.

Title to the Centre furnished property shall remain vested in the Centre. The Contractor shall maintain adequate property control records of the Centre furnished property

The Contractor, upon delivery to him of any Centre furnished property shall assume the risk of, and shall be responsible for, any loss thereof, or damage thereto, except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

The Contractor shall, upon completion of this contract dispose of all Centre furnished property not consumed in the performance of this contract as directed by the Contracting Officer.

The Contractor shall not modify any Centre furnished property unless specifically authorised by the Contracting Officer.

### **33. Works and Variations (for construction and engineering works)**

No excavation, penetration, drilling, etc. will be started by the Contractor without a formal permit from the Contracting Officer.

For all works the Contractor shall, prior to performing any excavation, penetration, drilling, etc. request and obtain from the Contracting Officer the location of any known existing buried utilities, such as cables, piping, or communication lines. Additionally, prior to any such work, a metal, cable or water detecting device shall be used to confirm the route of the buried services.

Hand excavation methods will be used in the vicinity of known existing services to ensure protection and care of the existing utility lines. Any unknown cable, pipe or fittings exposed by the contractor during excavation work shall be brought to the Contracting Officer 's attention and if directed by the Contracting Officer registered in the as-built drawings.

At any time, the contractor is to point out to the Contracting Officer any omissions or inaccuracies he encounters before or during the execution of the works. If the contractor wishes to offer an alternative solution to any problem, he may submit any additions, subtractions or alternative solutions to the Contracting Officer. A contract modification or a supplementary call order may then be issued to cover any amendments as applicable.

### **34. Centre provided Drawings**

Any drawings provided by the Centre are to be considered as diagrammatic and/or conceptual only, showing the site of the work and the general layout. Upon receipt of drawings the contractor shall promptly review them and notify the Contracting Officer of any discrepancies. A design review meeting may be arranged to finalize and define all the details of the work after which the contractors shall produce detailed calculations, design specifications and construction drawings.

### **35. Documentation**

The Centre reserves the right without further payment to reproduce and/or translate, in whole or in part, for sole use in the Centre, any or all documentation supplied by the Contractor under the contract.

### **36. As-built Drawings**

As-built drawings show actual condition of completed project which may differ from construction plans or working drawings if changes were made on site during execution to overcome physical obstacles or minor problems. If required by the Contract the contractor shall provide as-built drawings which reflect all works performed and include measurements, notes, references, loads, assumptions, connections to existing utility network, etc. As-built drawings become the property of the Centre and are due before acceptance unless otherwise agreed. Unless specified otherwise, as-built drawings shall be submitted in hard copy and digitized format.

### **37. Technical Brochures and Maintenance Planning**

The contractor shall provide two sets of the technical specifications and maintenance programmes for any installed equipment. These documents shall be submitted with the as-built drawings, or to a previously agreed schedule.

### **38. Maintenance of Centre Owned Premises and Fixtures**

If the Centre owned premises are put at disposal of the Contractor, he shall maintain these premises safe, secure and clean; he shall also assume all expenses of repair caused by his negligence, that of his employees, or any other deed for which he may be held responsible. The premises shall be available for inspection at any time by the Centre. The contractor shall not make any alterations to the premises and fixtures without prior written approval of the Centre. This does not prohibit the contractor from providing suitable decoration for the facility at his own expense.

Failure by the contractor to fulfil any of the provisions in the above paragraphs, after appropriate written notice by the Contracting Officer, shall give the Centre the right to cause these provisions to be fulfilled to the Centre's requirements and to pass the full costs of such fulfilment to the contractor for immediate reimbursement to the Centre without regard to any actions the contractor may plan to take to obtain reimbursement from any other party or parties.

### **39. Service and Parts Availability**

Unless as specified otherwise in the Contract, the Contractor and his Sub-contractors will maintain and furnish a source of an adequate supply of services, components, spare parts and sub-assemblies to properly maintain the supplies for a period of minimum five (5) years from Contract Effective Date.

### **40. Contract prices**

Unless otherwise indicated in the contract, the contract prices are in Euro and are firm and fixed. The contract prices, including the prices in any sub-contracts hereunder, do not include any customs charges, taxes or other charges levied by the member nations of NATO on the work performed by the Contractor under this contract.

The Contractor warrants that the prices set forth in this contract are as favourable as those extended to any Government, Agency, Company, Organisation or individual purchasing like quantities covered by the contract under similar conditions. In the event that prior to complete delivery under this contract the Contractor offers any of such items in substantially similar quantities to any customer at prices lower than those set forth herein, the Contractor shall so notify the Centre and the prices of such items shall be correspondingly reduced by a supplement to this contract.

### **41. Taxes and Customs Charges**

In application of the "Agreement on the status of the North Atlantic treaty Organization, National Representatives and International Staff" (Ottawa Agreement), Articles IX and X - the Centre is exempt from payment of duties and taxes (including VAT) on expenditures, assets income and other property. Any tax, duty or charge from which NATO is exempt or from which the Contractor or any relevant third party contractor is exempt under the laws of the taxing country shall not be add to the contract price.

#### **42. Payments**

Payment for all supplies and services shall be made no later than thirty days (30) after receipt of properly supported and acceptable invoices submitted upon delivery of supplies or completion of the works, inspection and acceptance of the items of supply and services covered herein. No payment shall be made with respect to undelivered supplies, work not performed and/or services not rendered under this Contract. Payment will be effected in the currency of the Contract. At the option of the Centre, payments may be made by the Centre either by check or electronic funds transfer.

#### **43. Advance Payments**

Except as otherwise provided in the contract the Contracting Officer may authorise an advance payment not exceeding thirty (30) percent of the total value of the ordered supplies or services on the condition that the contractor establishes an equivalent Bank Guarantee in favour of the Centre.

The Bank Guarantee may be in the form of a certified cheque, cashier's cheque, irrevocable letter of credit, or such other financial instrument issued by a Italian banking institution governed by Italian legislation and acceptable to the Contracting Officer. Limited or automatically terminated bank guarantees are not acceptable.

A copy of the Bank Guarantee will be attached to the invoice presented for payment under this clause.

The Contractor will extend the validity of the Bank Guarantee until the date of Final Acceptance, at which time this collateral will be released.

#### **44. Invoices**

Invoices duly signed by authorised Contractor's Official shall be submitted in one original and three copies (or electronic invoice, if authorised) to the address of the Contracting Officer and shall include:

- Name and address of the Contractor
- Invoice date
- Purchase order number and purchase order line item number
- Contract description of supplies, services or works, sizes, quantities, unit prices (exclusive of taxes or duties for which relief is available) and extended totals.
- Terms of any prompt payment discount offered
- Name and address of official to whom payment is to be sent
- Designated financial institution for receipt of electronic funds transfer payments
- Name, title, phone number, fax number and e-mail address of person to be notified in event of defective invoice.

#### **45. Termination for Convenience of the Centre**

The performance of work under this contract may be terminated by the Centre in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Centre.

The Centre reserves the right to terminate the contract at any time in the event the appropriate NATO Authorities cancels the funding authorisation relating to the contract. In this case the termination of the contract shall be deemed as termination for convenience of the Centre.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (1) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (2) place no further orders or sub-contracts for material, services or facilities, except as may be necessary for completion of such portion of the work under the contract which is not terminated;
- (3) terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) settle all liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (5) take any action that may be necessary, or the Contracting Officer may direct, for the protection and preservation of the property related to the supplies and work under this contract;
- (6) transfer title and deliver to the Centre in the manner, at the times, and to the extent, if any, directed by the Contracting Officer of the:
  - (a) fabricated parts, work in process, completed work, and
  - (b) the completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the Centre;
- (7) complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed and accepted prior to the notice of termination.

Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Centre at all reasonable times at the office of the Contractor but without direct charge to the Centre, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authenticated reproductions thereof.

#### **46. Termination for default**

The Centre may, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- 1) if the Contractor fails to make delivery of the supplies or to perform the work or services within the agreed delivery time;
- 2) if the deliveries are not complete and operational and do not meet the Centre's requirement;
- 3) if an order be made or a resolution passed for the winding up, dissolution, liquidation, or bankruptcy of the Contractor;
- 4) if a receiver or manager is appointed for the assets of the Contractor or if the Contractor ceases to carry on business or becomes insolvent;
- 5) if the Contractor fails to perform any of the other provisions of this contract;
- 6) if the Contractor fails to provide the Centre, upon request, with adequate assurances of future performance.

In the event of termination for default, the Centre shall not be liable to the contractor for any amount for supplies and services not accepted, and the Contractor shall be liable to the Centre for any and all rights and remedies provided by law. In the event of termination for default, the Centre may procure supplies or services similar to those so terminated and the Contractor shall be liable to the Centre for any excess costs for such similar supplies or services. The Contractor shall continue diligently the performance of this contract to the extent not terminated under the provisions of this clause. Except with respect to defaults of sub-contractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both the Contractor and sub-contractor, without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

In addition to all other rights and remedies provided by law and this clause, the Centre reserves the right to require the Contractor to transfer title and deliver to the Centre in the manner and to the extent directed by the Contracting Officer:

- (1) any completed supplies and
- (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures,

plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated.

The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Centre has an interest.

Payment for completed supplies delivered to and accepted by the Centre shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Centre and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute". The Centre may withhold from amounts otherwise due to the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Centre against loss because of outstanding liens or claims of former lien holders. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the termination of the contract shall be deemed as termination for convenience of the Centre.

#### **47. Delays**

In the event the Contractor cannot perform the Contract for causes beyond the control and without the fault or negligence of the Contractor, as defined in the termination for default clause, such non-performance shall be deemed as excusable non-performance. In this case, subject to the Contracting Officer shall ascertain the facts and extent of the delay. The Contracting Officer may extend the time for performance of the contract, if possible, when in his judgement the findings of fact justify an extension. Moreover, any delays caused by the Centre will also be considered permissible delays. The burden of proof of such non-performance shall remain with the Contractor. All delays, other than those described above as permissible delays, are deemed to be unauthorized delays and are subject to the Centre's rights to terminate the contract for default or assess liquidated damages in accordance with the below clause.

#### **48. Liquidated Damages**

Should the Contractor fail to deliver the goods and services as specified in this contract then the Centre reserves the right by serving notice to the Contractor to:

- a) terminate this contract in whole or in part as provided in the Default Clause, or
- b) agree on an extension of the time for performance of the contract.

In the latter case the Centre reserves the right to apply 0.1% of the total contract price for each calendar day of delay as fixed, agreed, and liquidated damages up to a maximum of 10% of the contract price. In case of termination for default, the Contractor shall be liable, in addition to the excess costs provided in the termination for default clause, for the liquidated damages (0.1% of the total contract price for each calendar day of delay up to a maximum of 10%) accruing until such time as the Centre may reasonably obtain delivery or performance of similar supplies or services.

#### **49. Changes**

The Contracting Officer may at any time, by a written order, make changes, within the general scope of this contract. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, a negotiated adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

#### **50. Variation in Quantity**

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packaging, or allowances in manufacturing processes and then only to the extent, if any, specified elsewhere in contract.

#### **51. Order of Precedence**

In the event of conflict between the Contract General Provisions or standard terms & conditions and the Contract Special Provisions, the Special Provisions shall prevail. In any event, should there be any inconsistency whatsoever, the Contractor shall give the Contracting Officer written notice, and the Contracting Officer shall give the Contractor prompt clarification.

#### **52. Inconsistency between the English Version and Translation of Contract**

The Contract shall be executed in the English language in two originals and each party shall be entitled to one of them duly executed by the other. The English language shall govern in implementation and interpretation of the Contract. In the event of inconsistency between any terms of this contract and translation thereof into another language, the English language shall control.

#### **53. Contract Effective Date (CED)**

The effective date of the contract is the date of last signature by the contracting parties, or a specific date set forth in the Contract. If the contract is the result of a sealed bid competition (IFIB or IFIB), the contract effective date is the date the Contracting Officer accepts the bidder's offer by signing the NURC SF 33 (Part. I Sect. A Solicitation/Contract Form) block no. 27, and the firm receives the notice of award, whichever is later.

#### **54. Disputes**

Except as otherwise provided in the Contract, all disputes arising under the Contract which are not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decisions to writing, and furnish a copy thereof to the Contractor.

Within thirty days from the date of receipt of such copy, the Contractor may appeal by furnishing to the Contracting Officer a written appeal. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the Centre shall be final unless the Contractor – within thirty days from receipt of the decision - requests the Centre that the question in dispute be submitted to arbitration (see “Arbitration” clause). In all cases, the Contractor will proceed diligently with the performance of the contract and in accordance with the decision of the Centre’s representatives.

## **55. Arbitration**

Disputes arising from the performance and/or the interpretation of a contract which are not settled amicably shall be submitted to arbitration as follows:

The party instituting the arbitration proceedings will advise the other party by registered letter, with official notice of delivery, of his/her desire to have recourse to arbitration. Within a period of 30 days from the date of receipt of this letter, the parties will jointly appoint an arbitrator. In the event of a failure to appoint an arbitrator, the dispute or disputes will be submitted to an Arbitration Tribunal consisting of three arbitrators – one being appointed by the STO, another by the other contracting party, and the third, who will act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the 15 days following the expiration of the first period of 30 days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal within 30 days following the expiration of the first period, the appointment will be made, within 21 days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration at The Hague.

Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

Any arbitrator must be of the nationality of any one of the member Nations of NATO and will be bound by the rules of security in force within NATO.

Any person appearing before the Arbitration Tribunal in the capacity of an expert witness will, if he/she is of the nationality of one of the member Nations of NATO, be bound by the rules of security in force within NATO; if he/she is of another nationality, no NATO classified documents or information will be communicated to him/her.

An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, will be replaced under the procedure laid down in the first paragraph of this Article.

The Arbitration Tribunal will take its decisions by a majority vote. It will decide where it will meet and, unless it decides otherwise, will follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

The awards of the arbitrator or of the Arbitration Tribunal will be final. There will be no right of appeal or recourse of any kind. These awards will determine the apportionment of the arbitration expenses.

(End of Standard Terms & Conditions)